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DIVISION II

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STATE OF WASHINGTON

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

MARK LEE VIPPERMAN, JR.,

Appellant.

No. 46451-9-II

UNPUBLISHED OPINION

WORSWICK, J. — Mark Lee Vipperman Jr. appeals his conviction pursuant to a guilty plea for malicious harassment,<sup>1</sup> arguing that his guilty plea was involuntary because he was not properly informed of the nature of the charge of malicious harassment. We affirm.

FACTS

Vipperman pleaded guilty to one count of malicious harassment for threatening two victims. The statement of defendant on plea of guilty form said, “The elements of this crime . . . are as set out in the 2nd amend[ed] information, dated 5/21/14[,], a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer.” Clerk’s Papers (CP) at 23. The second amended information alleged in part:

[Vipperman] . . . did unlawfully, feloniously, maliciously, and intentionally threaten [the victims], and place said persons in reasonable fear of harm to person or property because of his perception of the race, color[,], religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap of [the

<sup>1</sup> RCW 9A.36.080(1)(c).

victims], contrary to RCW 9A.36.080(1)(c), and in the commission thereof [Vipperman], or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife, that being a deadly weapon as defined in RCW 9.94A.825.

CP at 21. Vipperman stated the factual basis for his plea in paragraph 11 of his statement of defendant on plea of guilty:

The judge has asked me to state what I did in my own words that make me guilty of this crime. This is my statement:

I maliciously and intentionally threatened [the victims] and placed them in reasonable fear of harm to their persons because of my perception of their race. In the commission of making the threat, I was armed with a knife, a deadly weapon.

CP at 31. The trial court held a thorough plea colloquy that included the following:

[Trial Counsel]: . . . . We have received a copy of the second amended information and waive formal reading. [Vipperman] is proffering a plea of guilty to that charge.

Mr. Vipperman has received no formal education. Currently, he has difficulty reading and writing the English language, so I read him the entire statement of defendant on plea of guilty. I believe I answered all his questions to his satisfaction.

As a result of my conversations with him, I do believe he's entering into this knowingly, intelligently and voluntarily, and ask the Court to accept it. He should be able to answer any questions you have in that regard.

. . . .  
[Superior Court]: So, Mr. Vipperman, the second amended information charges you with malicious harassment while armed with a deadly weapon or with a deadly weapon sentencing enhancement. I understand you're prepared to plead guilty to that charge.

[Vipperman]: Yes.

[Superior Court]: . . . Mr. Vipperman, have you had a chance to discuss this plea with [trial counsel]?

[Vipperman]: Yes.

. . . .  
[Superior Court]: Did [trial counsel] explain what malicious harassment is?  
[Vipperman]: Yes.

. . . .  
[Superior Court]: Paragraph 11 . . . says [superior court's verbatim recitation of paragraph 11]. Is that your statement?

[Vipperman]: Yes.

[Superior Court]: And how do you plead to malicious harassment?

[Vipperman]: Guilty.

[Superior Court]: I'm going to enter your guilty plea along with the finding that your decision to plead guilty is knowing, intelligent, and voluntary, and there's a factual basis to support your plea in paragraph 11.

Verbatim Report of Proceedings (VRP) (May 28, 2014) at 2-6. Based on his plea, Vipperman was convicted of malicious harassment. Vipperman appeals.

#### ANALYSIS

Vipperman argues he was not informed of malicious harassment's essential elements.

We disagree.

Under due process, a defendant's guilty plea must be knowing, voluntary, and intelligent. *State v. Weyrich*, 163 Wn.2d 554, 556, 182 P.3d 965 (2008). This requires the defendant to be informed of the nature of the charged offense. *State v. Holsworth*, 93 Wn.2d 148, 153, 607 P.2d 845 (1980). The defendant is sufficiently informed of the nature of the charged offense if he is informed of that offense's essential elements. 93 Wn.2d at 153.

Where a defendant has completed a written guilty plea statement in compliance with CrR 4.2(g) and admitted that he has read it, that he understands it, and that its contents are true, "the written statement provides prima facie verification of the plea's voluntariness." *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). Furthermore, where the superior court goes on to inquire orally of the defendant and satisfies itself on the record that the various criteria of voluntariness exist, "the presumption of voluntariness is well nigh irrefutable." 33 Wn. App. at 262.

RCW 9A.36.080(1) states in part:

A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

....  
(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances.

#### I. PERCEPTION OF THE VICTIMS

Vipperman argues he was not informed of malicious harassment's essential element that his motivation for making the threat had to be his perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap. We disagree.

Vipperman's statement on plea of guilty specifically stated that he received and reviewed the second amended information with trial counsel, and that the second amended information set out the elements of Vipperman's crime. The second amended information alleged that Vipperman threatened the victims "because of his perception of the race, color[,] religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap of [the victims]." CP at 21. At the sentencing hearing, trial counsel acknowledged receiving the second amended information and waived formal reading. The superior court orally inquired and satisfied itself on the record that Vipperman had discussed the plea with trial counsel and that trial counsel had explained the nature of malicious harassment to Vipperman.

Furthermore, Vipperman's statement of defendant on plea of guilty stated that he threatened the victims "because of [his] perception of their race." CP at 31. The superior court orally inquired and satisfied itself on the record that Vipperman made this statement and that the statement was knowing, intelligent, and voluntary.

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This shows Vipperman was aware of malicious harassment's essential element that he had to make his threat because of his perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap. Thus, Vipperman's claim fails.

## II. TRUE THREAT

Vipperman also argues he was not informed of malicious harassment's essential element that his threat had to be a true threat. We disagree because the true threat concept is not an essential element of malicious harassment.

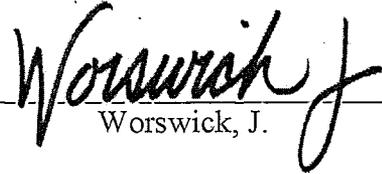
To avoid violating the First Amendment of the United States Constitution, a statute criminalizing threatening language must be construed as criminalizing only true threats. *State v. Johnston*, 156 Wn.2d 355, 363-64, 127 P.3d 707 (2006). "A true threat is a statement made in a context in which a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual." *State v. Williams*, 144 Wn.2d 197, 218, 26 P.3d 890 (2001).

But this true threat concept is not an essential element of threatening language crimes like malicious harassment. *See State v. Tellez*, 141 Wn. App. 479, 483-84, 170 P.3d 75 (2007). As discussed above, the defendant is sufficiently informed of the nature of the charge as long as he is informed of the offense's essential elements. *See Holsworth*, 93 Wn.2d at 153. Thus, because the true threat concept is not an essential element of malicious harassment, due process does not require the defendant to be informed of the true threat concept before pleading guilty to malicious harassment. Therefore, Vipperman's claim fails.

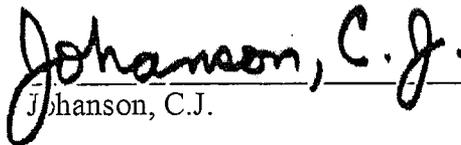
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We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
Worswick, J.

We concur:

  
Johanson, C.J.

  
Melnick, J.